

BEFORE THE FAIR EMPLOYMENT AND HOUSING COMMISSION  
OF THE STATE OF CALIFORNIA

In the Matter of the Accusation  
of the

DEPARTMENT OF FAIR EMPLOYMENT  
AND HOUSING

v.

ARTIFER U.S.A., INC., a California Corporation;  
and RAMEZ SULIMAN, Individually,

Respondents.

BROOKE CELESTE ANDERSON,

Complainant.

Case No.

E-200607-C-1009-00-se

E-200607-C-1009-01-s

C 07-08-071

09-05-P

DECISION

The Fair Employment and Housing Commission hereby adopts the attached Proposed Decision as the Commission's final decision in this matter. The Commission designates the decision as precedential pursuant to Government Code section 12935, subdivision (h), and California Code of Regulations, title 2, section 7435, subdivision (a), specifically on the issues of the timeliness of the hearing under Government Code section 12968 absent a signed written waiver from respondent, and the need for businesses to provide effective harassment complaint and redress mechanisms, particularly where the harasser is the employing company's owner, president, or other key decision-maker.

Any party adversely affected by this decision may seek judicial review of the decision under Government Code section 11523, Code of Civil Procedure section 1094.5, and California Code of Regulations, title 2, section 7437. Any petition for judicial review and related papers shall be served on the Department, the Commission, respondents, and complainant.

DATED: September 30, 2009

\_\_\_\_\_  
GEORGE WOOLVERTON

\_\_\_\_\_  
PATRICIA PEREZ

\_\_\_\_\_  
LINDA NG

\_\_\_\_\_  
STUART LEVITON

\_\_\_\_\_  
DAVE CAROTHERS

BEFORE THE FAIR EMPLOYMENT AND HOUSING COMMISSION  
OF THE STATE OF CALIFORNIA

In the Matter of the Accusation  
of the

DEPARTMENT OF FAIR EMPLOYMENT  
AND HOUSING

v.

ARTIFER U.S.A., INC., a California Corporation;  
and RAMEZ SULIMAN, Individually,

Respondents.

BROOKE CELESTE ANDERSON,

Complainant.

Case No.

E-200607-C-1009-00-se

E-200607-C-1009-01-s

C 07-08-071

PROPOSED DECISION

Administrative Law Judge Caroline L. Hunt heard this matter on behalf of the Fair Employment and Housing Commission on February 23 through 25, 2009, and March 10 through 12, 2009, in Fresno, California. Phoebe P. Lui, Staff Counsel, and Sybil Villanueva, Senior Staff Counsel, represented the Department of Fair Employment and Housing. Ramez Suliman represented both himself and Artifer USA, Inc., as a non-attorney representative, while Katrina Benitez, Esq., attorney at law, attended the proceedings as an observer on respondents' behalf. Complainant Brooke Anderson attended the proceedings throughout. Her cousin Justin Rieger also attended as an observer for complainant.

At the conclusion of the evidentiary hearing and receipt of the transcripts, the parties' post-hearing briefs were agreed by the parties to be due simultaneously, on April 17, 2009. Respondents also agreed to submit to the Commission and to the DFEH copies of pre-marked exhibits no later than by the same date. The DFEH's post-hearing brief was timely submitted. No post-hearing brief nor copies of exhibits were submitted by respondents. After holding open the record for untimely submission, the record was deemed closed on May 17, 2009.

After consideration of the entire record, the administrative law judge makes the following findings of fact, determination of issues, and order.

## FINDINGS OF FACT

1. On April 19, 2007, Brooke C. Anderson (complainant or Anderson) filed written, verified complaints with the Department of Fair Employment and Housing (DFEH or Department) against Artifer U.S.A. and Ramez Suliman, as an individual. The complaints alleged that, in the preceding year, complainant was sexually harassed because of her sex, female, by Ramez Suliman, owner of Artifer U.S.A., and constructively discharged from her position as Business/Office Manager, in violation of the Fair Employment and Housing Act, Government Code section 12900 et seq. (the Act or FEHA).

2. The DFEH is an administrative agency empowered to issue accusations under Government Code section 12930, subdivision (h). On June 25, 2008, Phyllis W. Cheng, in her official capacity as Director of the DFEH, issued an accusation against respondent Artifer U.S.A., a California Corporation (Artifer U.S.A.), and respondent Ramez Suliman, Individually (Suliman), on the complaints filed by Anderson.

3. The DFEH's accusation alleged that, from December 2006 to February 12, 2007, complainant was employed as a front office manager at Artifer U.S.A., where Suliman, complainant's supervisor, subjected complainant to physical, visual and verbal sexual harassment. The DFEH alleged that Suliman's unwanted sexual remarks and conduct created an intimidating, hostile and offensive work environment for complainant, in violation of Government Code section 12940, subdivisions (a) and (j), and constructively discharged complainant from her employment. The DFEH further alleged that respondents failed to take all reasonable steps to prevent the harassment, in violation of Government Code section 12940, subdivision (k).

4. In 2006, respondent Suliman established Artifer U.S.A., a California corporation, engaged in the business of fabrication, sale and installation of decorative wrought iron products, including fences, railings, and gates. The company maintained a business front office, showroom, and warehouse, located at 2500 South Van Ness, Fresno, California. At all times relevant, Artifer U.S.A. employed more than five employees, and was thus an employer, within the meaning of Government Code section 12940, subdivisions (a), (j), and (k). Suliman was the founder, president and onsite manager of Artifer U.S.A., describing himself as the "owner," and overseeing the hiring, firing and daily supervision of all employees.

5. On December 13, 2006, Suliman hired complainant Anderson as the front office manager at Artifer U.S.A. Anderson's rate of pay was \$3,000 per month and her duties primarily involved bookkeeping and writing checks to pay the company's outstanding invoices. Anderson worked at home for her first week of employment, due to illness. Suliman visited her at her home on two later occasions, once to deliver a camera for her computer and another time, to check up on her work. Once Anderson was well enough to

return to work, in late December 2006, she performed her duties in her office at Artifer U.S.A.

#### Respondent's Remarks to Anderson About Salesperson "Jane Doe 1"

6. Starting in January 2007, Suliman made sexually explicit comments to Anderson about one of the company's female sales staff, "Jane Doe 1."<sup>1</sup> Suliman told Anderson that Jane Doe 1 had masturbated for him on the couch in his office; had once pulled a vibrator out of her purse to show him; and had given Artifer U.S.A.'s clients "blowjobs" in order to close sales deals. Suliman also told Anderson that he had once caught Jane Doe 1 "making out" in the bathroom with a woman.

7. In response to Suliman's remarks about Jane Doe 1, Anderson asked him to "stop it," and repeatedly told Suliman that she did not want to hear any remarks about sexual matters. She told Suliman that she had been used to a professional working environment in her prior job, and that his conduct was neither professional nor appropriate. When Suliman, despite her requests that he stop, continued to talk about Jane Doe 1 in demeaning sexual ways, Anderson felt powerless and frustrated.

8. Throughout January and early February 2007, Suliman continued to make provocative and sexually explicit remarks to Anderson about Jane Doe 1. On one occasion, he told Anderson that Jane Doe 1 had suggested a sexual "threesome" with him and a mutual acquaintance. Anderson responded to Suliman, "We will never have this conversation, my marriage bed is sacred. It's not anything I need to know about anyone else, nor will I give you any information about me, so there is no need to try to lead me into a conversation." Suliman responded, "Whatever, whatever, whatever."

9. In Anderson's presence, Suliman also described Jane Doe 1 as a "fucking whore" at least four times, and as a "stupid bitch" at least 10 times. One day, in response to Suliman's angry ranting about Jane Doe 1's job performance, Anderson said to him, "If you are having that much trouble with her, why don't you fire her?" Suliman responded, "I can't fire her, if I fire her I would have a huge sexual harassment case on my hands."

10. As a result of Suliman's derogatory and sexually explicit references to Jane Doe 1, Anderson repeatedly felt intimidated and uncomfortable. She was distracted and unable to focus on her work. She became cautious and conscious of the need to distance herself from Suliman.

#### Suliman's Comments About Anderson's Appearance

11. Commencing in early January 2007, and continuing throughout her employment at Artifer U.S.A., Suliman constantly scrutinized and commented on Anderson's appearance,

---

<sup>1</sup> The co-worker designated in this decision as "Jane Doe 1" was referred to by her full name at hearing and, although identified as a witness by respondents, was not called to testify. She is identified as Jane Doe 1 in this decision to protect her privacy.

frequently telling her, “You look beautiful today;” “Damn, you look hot;” “Damn, you look so good today;” and “Any man in America would want to fuck you.” One day when she changed her hairstyle, Suliman remarked on it, saying “Wow, look at the hair” and, to warehouse employees, Tapia Valencia and Tony Sanchez, Jr., in her presence, “Doesn’t her hair look beautiful today? Doesn’t her hair look great?” On one occasion, when complainant entered Suliman’s office, he said, “You look very beautiful today,” and, addressing another man sitting in his office, Suliman added, “Doesn’t she look beautiful today?”

12. These frequent comments by Suliman about her appearance made Anderson uncomfortable. She felt that he continually rated her appearance, and she worried constantly about what he would say next. She often asked her husband of three months, Chad Anderson, after she had dressed for work in the morning, whether she should change anything she was wearing. Chad told her she was dressed perfectly appropriately.

13. Nevertheless, in late January 2007, in an attempt to forestall Suliman’s comments about her appearance, Anderson decided to change how she dressed—instead of her regular attire of a turtleneck sweater or button-down shirt, she started wearing a hooded sweatshirt, baseball cap, no makeup, and her hair pulled back in a ponytail. Suliman told Anderson to put on some makeup and “do something” to make herself look nicer.

#### Installation of Webcam

14. The first time Suliman visited the Andersons’ home, in early January 2007, Suliman tried to install a webcam on the laptop computer that Anderson used at home. Neither complainant nor her husband wanted the webcam device in their home, and never used it. Anderson communicated regularly with Suliman via email and telephone, and did not understand the need for a webcam in her home.

15. At Artifer U.S.A., Suliman installed webcams on the computers in the offices. Anderson noticed that the webcam in her office was attached on her computer monitor, directed at her chest area when she was seated at her desk. Although she frequently changed the position of the webcam to point away from her, the next day she found it repositioned once more on top of her computer monitor.

16. On one occasion during her employment at Artifer U.S.A., Anderson learned that Suliman had used the webcam microphone to eavesdrop on a private conversation between her and a co-worker. Knowing that Suliman may have been watching her and had been listening to her via the webcam made Anderson very uncomfortable. She decided to be careful not to discuss private information in her workplace.

### Respondent's Remarks to Anderson About Bank Employee "Jane Doe 2"

17. In early January 2007, Suliman took Anderson to Bank of America, where he introduced her to a bank employee, Jane Doe 2.<sup>2</sup> On the drive back to the office, Suliman told Anderson that he had a sexual relationship with Jane Doe 2. Anderson said, "That's really none of my business," considering it inappropriate and disrespectful of Suliman to mention the matter.

18. On another occasion, Suliman told Anderson that whenever she went to the bank, she should flirt with the male tellers, so that Artifer U.S.A.'s checks would clear more easily. Anderson considered Suliman's suggestion that she use her sexuality as part of her job degrading.

### Suliman's Gifts to Anderson

19. In late January 2007, Suliman instructed Anderson to buy herself new clothes. When Anderson responded that she did not need or want any new clothes, Suliman insisted, ordering her to write herself a check for \$250 from the company account to buy clothes to make her feel "sexy," and bring them back and show them to him. When Anderson repeatedly refused, Suliman became irritated, then indignant, hovering over her and raising his voice, saying, "Just write the check, I'll sign it, just write it, just write it." Anderson felt tense, uncomfortable and fearful for her physical safety, and finally relented, writing out the check to make him stop. Several times a week following the check incident, Suliman asked Anderson if she had been shopping yet. She told him, "No, and I'm not going to." She never cashed the check.

20. In late January 2007, toward the end of the work day, Suliman told Anderson that she seemed "frustrated," as if something was bothering her. He then told her, "Go home and I want you to have sex with your husband, and if that doesn't help, then use whatever means necessary. If you have a vibrator, use that. You need to do whatever you need to do to relax yourself. Have a glass of wine if you need." Anderson was disgusted, and shaking her head, walked out of the office, anxious to get away from Suliman as quickly as possible. She felt particularly uncomfortable, as she had previously told Suliman that she regarded the subject of her marriage bed "sacred" and never to be discussed.

21. Later that evening in late January 2007, Suliman dropped by the Andersons' home unannounced. When Chad and Brooke Anderson opened the door, Suliman handed a bottle of wine to Chad, telling them both, "You two enjoy [the wine] together." Anderson felt her stomach knot up, and felt "gross," recalling Suliman's comments about sex and wine earlier. As soon as Suliman left, she told Chad that she wanted nothing to do with the wine and secluded herself in her bedroom for the rest of the evening. The next day at work, Suliman

---

<sup>2</sup> The bank employee, who was identified by name at hearing, is referred to in this decision as "Jane Doe 2" to protect her privacy.

said to Anderson, “I did a good job with Chad last night, ha, that was a good thing I did.” Anderson left the room, feeling uncomfortable realizing that Suliman was thinking about sex between her and her husband.

22. The next week, during the first week of February 2007, Suliman bought a pink mug from a Valentine’s Day display at a coffee shop, and presented the mug to Anderson. The mug had a dangling charm and the word “sweet” on it. Anderson did not ask for nor want the mug.

#### Suliman’s Remarks About Chad Anderson

23. During Anderson’s employment at Artifer U.S.A., Suliman made over a dozen comments about Anderson’s husband, Chad. On one occasion, after asking about her husband’s work and learning that he was in the mortgage real estate business, Suliman told Anderson that Chad was likely to be unfaithful to her and lie about it. Anderson, who had been married to Chad for just three months at the time, responded that she trusted her husband completely.

24. In mid-January 2007, when Suliman learned that Chad Anderson had a female business associate, Suliman told Anderson to be careful and “make sure that nothing was going on.”

25. Several times, Suliman told Anderson that Chad was not taking care of her properly because the couple shared a car. When Anderson explained that she was comfortable being dropped off and picked up by her husband, Suliman opined that Chad was trying to control her. In late January 2007, Suliman told Anderson that it irritated him that she did not have her own car, and that he would buy one for her. At some point, instead Suliman lent her his truck to drive.

26. Suliman’s remarks about Anderson’s husband made her feel as if her relationship with Chad was under attack and that she needed to defend her marriage. Anderson found Suliman’s comments to be distracting and they made her uncomfortable.

27. In addition, Suliman’s temperament in the workplace was volatile, frequently loud, and verbally aggressive with other employees. Anderson heard him often use expletives and curse words, including “bitch,” “fuck” and “shit.” Anderson felt uncomfortable with the use of this language in the workplace. In addition, Suliman did not act to prevent inappropriate language by other employees, even after Anderson asked him to do so. For example, on one occasion, when Anderson asked Suliman and his employees, including Tony Sanchez, to tone down the bad language, Sanchez said to Suliman, “You better get your bitch under control.” Although Sanchez later apologized, Anderson felt demeaned and disgusted at being spoken to in such a way.

### Suliman's Physical Touching of Anderson

28. In early-February 2007, Anderson had painters working on the outside of her house. In the late afternoon, Suliman dropped by Anderson's house, ostensibly to check on the painters' progress. Anderson was getting ready to go out to dinner with friends and was dressed in a sweater and jeans. Suliman said to Anderson, "Damn, look at you. You look so good. Why don't I get this at the office?" Suliman then grabbed Anderson, pulled her forcefully toward him, hugging her so tightly that she could barely move. She pushed him away from her and told him to leave. He said, "Oh, okay, okay. We'll go."

29. Suliman's touching her made Anderson feel uncomfortable and dirty—she wanted simultaneously to cover herself up with a blanket and crawl out of her own skin. She felt violated in her own home and frightened for her safety.

30. That evening at dinner, Anderson asked her friend if there was anything about what she was wearing that would attract unwanted attention. Her friend assured her that she "could have gone to church dressed like that."

### February 9, 2007 Telephone Call

31. On two occasions in February 2007, when Anderson's husband was out of town on business, Suliman asked Anderson to meet him outside of work for drinks. The first time, in the first week of February 2007, Anderson responded, "Absolutely not." Suliman said that he just needed a friend to talk to. Anderson felt uncomfortable, as Suliman was not satisfied with her answer. At work later that week, on February 9, 2007, Suliman again asked Anderson to meet him for drinks. Anderson again explained that she felt it was inappropriate, especially as her husband was out of town.

32. Later that same day, February 9, 2007, Suliman called Anderson at home. When she told him that she was going out to dinner with friends, Suliman became angry, saying, "Oh, I see you can make time for them and you can't make time for me." Anderson hung up the phone. A few minutes later, Suliman called a second time, on Anderson's cell phone, asking where she was going so that he could meet up with her later. Anderson refused to tell him. Suliman insisted, saying, "It's inappropriate, and I'm your boss and I'm nervous about asking you...Has anybody ever made love to you the way you feel you deserve to be made love to? Has anybody ever...made you have an orgasm so hard that you've passed out?" Anderson said, "No, I have to go," meaning "No, stop," and "I have to go," and hung up. Suliman then called back a third time, and Anderson again hung up, turning off her cell phone.

33. As a result of Suliman's remarks to her, Anderson felt sick to her stomach, violated and disgusted. She "choked up" and started shaking. She felt "dirty." She was worried that if she did go out to dinner that night, she might encounter Suliman. She felt frustrated, angry and embarrassed. That evening, she went to dinner with her friends but was



unable to eat anything. That night, she had trouble sleeping. She decided that Suliman would never respect her personal boundaries and that as a result, she had no choice but to leave her job.

Monday, February 12, 2007

34. On Monday, February 12, 2007, Anderson went to work early, intending to give notice that she was quitting. When Suliman arrived, he said to Anderson, "I'm really pissed at you." Suliman then said, "After our conversation Friday night, I was so hot that...I had to fuck the shit out of [Jane Doe 2] while I was thinking about you to get it off my mind."

35. Anderson was disgusted, wanting to get away from Suliman immediately. She said, "Oh my God," walking out of the room, past a coworker, Francesca Younge. Younge, who had been unable to get into her locked office that morning, followed Anderson into her office, asking if she was okay. They then heard a loud crashing and splintering noise. Looking outside, they saw Suliman walking away from Younge's office, the door frame broken and splintered.

36. As a result of Suliman's conduct, Anderson started visibly shaking and crying, frightened of his erratic behavior and violence. She felt sick to her stomach, trying not to vomit.

37. Anderson immediately called her husband, asking that he pick her up from work as soon as possible. Until he arrived, Anderson stayed in her office with the door locked. As soon as Chad arrived, Anderson started crying with relief that she was safe and could leave.

38. That night, Anderson told Chad what had happened at work over the past several weeks. As a newlywed, Anderson had previously felt too embarrassed to tell him about Suliman's conduct. She felt very alone, but was concerned that Chad would be angry. Once she told Chad in detail what she had been going through, Chad, while angry at Suliman, was supportive of Anderson.

39. The next day, February 13, 2007, Chad called Artifer U.S.A. on Anderson's behalf, saying that she would not be coming in to work. That same day, Suliman left over a dozen voicemail telephone messages for Anderson, several of them angry, saying, for example, "What the fuck. Where are you?" Anderson did not return any of Suliman's calls.

40. As a result of Suliman's conduct toward her, Anderson suffered from episodes of anxiety and had nightmares involving Suliman.

41. Throughout that day, February 13, 2007, Anderson was in a state of disbelief, intimidated by Suliman's hostile voicemail messages. She cried, was restless and unable to eat anything. Too uneasy to stay at home, she went to a friend's house for the day. She did not subsequently return to work at Artifer U.S.A.

42. Anderson made an appointment to see her doctor, Dwight W. Sievert, M.D., the next day, February 14, 2007. Dr. Sievert was a Diplomate of the National Board of Medical Examiners and the American Board of Psychiatry and Neurology, and was certified as an expert witness at hearing. Anderson had been under Dr. Sievert's care since May 2005, when she consulted him after several sudden deaths of her immediate family members, when she had experienced, according to Dr. Sievert, resulting depression and anxiety. By December 2006, however, Dr. Sievert observed Anderson to be much improved, reporting "good changes," including her recent marriage and her new job.

43. In her appointment with Dr. Sievert on February 14, 2007, Anderson told the doctor about being sexually harassed by Suliman at Artifer U.S.A. Dr. Sievert observed Anderson to be very distraught, anxious, tense and tearful as a result of the sexual harassment. He diagnosed her with "acute stress disorder," characterized by Anderson's emotional distress manifested by anxiety, recurring thoughts of the traumatic event, and inability to focus on other things. Dr. Sievert recommended that Anderson take an anti-depressant medication, Cymbalta, and Xanax, an anti-anxiety medication. In February 2007, Dr. Siebert also placed Anderson on disability due to the stress she experienced as a result of Suliman's sexual harassment.

44. Dr. Sievert referred Anderson to counseling with Ronald L. Gandolfo, Ph.D., ABPP, a clinical psychologist practicing adult and child psychotherapy in Fresno, California. Dr. Gandolpho was also certified as an expert witness at hearing. On March 22, 2007, Anderson had her first session with Dr. Gandolpho, seeing him in 18 subsequent sessions between March and October 2007. In these therapy sessions, Dr. Gandolpho counseled Anderson for her ongoing emotional distress resulting from Suliman's conduct. He noted that, as a result of Suliman's harassment, Anderson was "nervous" and "tearful," and that she suffered post traumatic stress and panic disorder.

45. As a result of Suliman's sexual harassment, Anderson, who had previously felt confident in her independence and professionalism as a working woman, became reclusive and overly reliant on her husband. She had trouble sleeping, was anxious and fearful. She also became hyper-vigilant about her surroundings: she avoided going out alone at night; was very anxious if home alone; often waited for a neighbor or her husband to accompany her into her house; and could not take a shower when in her home by herself. Through the date of hearing, Anderson remained afraid of Suliman, avoiding areas where she feared running into him.

46. Because of Suliman's sexual harassment, Anderson experienced a generalized fear of men, perceiving men she did not know as potential threats. As a result, she decided to change careers, choosing to have less contact with men in her working life.

47. In August 2007, Anderson enrolled at Federico Career College, studying on a full-time basis to become an aesthetician. Tuition was \$12,723. In December 2007, Anderson graduated from the college and subsequently, in January 2008, passed the California State examination for her aesthetician license.

48. Between March 2007 and November 2007, Anderson was paid \$7,172 in disability payments, \$3,692 in workers' compensation payments, and \$4,000 in a lump sum retroactive reimbursement payment from the Workers' Compensation Board.

49. Having received her aesthetician license, Anderson began looking for work in early 2008, applying at businesses including "Face Logic," "Dermologica," and "Provincia." She also applied for a teaching position at Federico Career College. In September 2008, she was hired by "Visual Changes Skincare," earning \$14 per hour, plus commission.

50. Artifer U.S.A. had an employee handbook, which included an anti-discrimination and anti-harassment policy. At no time, however, did Suliman or any other manager at Artifer U.S.A. disseminate a copy of either the handbook or the anti-discrimination/harassment policy to Anderson.

51. Artifer U.S.A. did not post any FEHA-mandated notices advising its employees of their rights and responsibilities concerning complaints of discrimination or harassment.

52. Suliman had not undertaken training in sexual harassment or discrimination prevention.

#### Procedural Facts

53. On September 18, 2007, the DFEH, during the course of its investigation of this case, issued and served a Set of Interrogatories and Request for Inspection and Copying to Artifer U.S.A..

54. Having not received a timely response, on December 3, 2007, the DFEH filed a Petition for Order Compelling Compliance with Investigative Discovery in the Superior Court of California, County of Fresno, pursuant to Government Code section 12963.5. The case was entitled DFEH v. Artifer U.S.A., Inc., case number 07CEG4030 DRF.

55. On February 13, 2008, the DFEH filed a Certificate of Compliance with the Fresno Superior Court. That same date, the Court entered the DFEH's Request for Dismissal of the Petition for Order Compelling Compliance.

56. At the hearing in this matter, the undersigned administrative law judge took official notice, pursuant to California Code of Regulations, title 2, section 7431, of the Fresno Superior Court records relating to the filing and disposition of DFEH's Petition for Order Compelling Compliance.

57. As noted above, the DFEH filed its Accusation in this matter on June 25, 2008. The DFEH sent the Accusation and related accusation packet to both respondents by certified mail addressed to 9470 North Winery Avenue, Fresno, CA, 93720. A signed green card was returned to the DFEH on June 27, 2008. Further copies of the accusation and accusation

packet, sent to respondents at 2045 Van Ness, Fresno, CA, 93721, and 292 W. Sierra Avenue, Fresno, CA 93704, were unclaimed.

58. As part of the accusation packet served on respondents on June 25, 2008, the DFEH included two documents entitled “Stipulation and Waiver of Government Code section 12968” (Stipulation and Waiver). The DFEH had prepared two such blank documents, one with a signature line reading “Ramez Suliman, Agent for Service of Process for ARTIFER U.S.A., INC. a California Corporation, Respondents” and the second, for “Ramez Suliman as an individual.”

59. By July 23, 2008, respondents had engaged the services of legal counsel in this matter, Glenn LoStracco, Attorney at Law, 2300 Tulare Street, Fresno, CA 93721. On July 23, 2008, LoStracco’s office sent a three page facsimile document to the DFEH, with a cover sheet entitled “Re: Ramez Suliman D.O.B. 05/20/66.” The accompanying document was an executed Stipulation and Waiver, signed by Ramez Suliman, over the preprinted signature line reading “Ramez Suliman, Agent for Service of Process for Artifer U.S.A., Inc., a California Corporation, Respondents.” Neither Suliman nor his attorney LoStracco returned the second written waiver.

60. On October 24, 2008, the DFEH sent out a Notice of Hearing in this matter, serving it by certified mail on respondents’ attorney Glenn LoStracco. The hearing was set to commence on December 16, 2008, in Fresno California.

61. Commencing on November 24, 2008, respondents’ counsel’s office made a number of telephonic oral requests to the Clerk of the Commission for a continuance of the hearing date in this matter. The DFEH notified the Commission that it opposed any continuance of the hearing date.

62. On December 2, 2008, respondents’ counsel sent a written request to the Commission, again seeking a continuance of the hearing date in this case, on the grounds that respondents’ counsel had an unavoidable scheduling conflict with a three-week criminal trial in Fresno Superior Court. On that basis, and providing that discovery was not reopened, the DFEH agreed to a continuance of the hearing to the first mutually available new hearing dates of February 23 through 25, 2009.

63. On December 4, 2008, the undersigned administrative law judge granted the continuance of the hearing dates as agreed to by the parties. The Amended Notice of Hearing, duly issued by the DFEH, was served on December 10, 2008, noticing the hearing to commence on February 23, 2009, in Fresno.

64. On January 30, 2009, Glenn LoStracco filed a “Substitution of Attorney,” substituting Suliman “in PRO PER” “both individually and on behalf of Artifer U.S.A.”

65. On February 17, 2009, the undersigned administrative law judge convened the initial telephonic pre-hearing conference in this case. Suliman appeared on his own behalf

and on behalf of respondent Artifer U.S.A. Phoebe Lui, Staff Counsel, appeared for the DFEH. Further pre-hearing conferences were subsequently convened, the same parties appearing, on the afternoon of February 17, and again on February 19, 2009, to resolve pre-hearing issues.

66. Respondents' Pre-Hearing Statement, dated and filed on February 23, 2009, was filed by Suliman on behalf of both Suliman as an individual and Artifer U.S.A.

67. On the last day of hearing, on March 25, 2009, Suliman, as part of his defense case in chief, sought leave to offer into evidence photographs which he testified about while displaying at hearing on his laptop computer. The photographs were pre-marked for admission into evidence, and the record was left open to permit respondents to submit copies to the Commission and the DFEH by April 17, 2009.

68. Having allowed for delay in the mail, but having not received the supplemental evidence or respondents' reply brief within 30 days of the due date, the Commission determined the evidentiary record closed on May 17, 2009, and the matter was deemed submitted.

69. Given that respondents failed to submit to the Commission exhibit numbers B through Q, these proposed exhibits are deemed withdrawn.

## DETERMINATION OF ISSUES

### Timeliness

Government Code section 12968 provides that hearings shall take place not more than 90 days after the issuance of the accusation upon which they are based. Parties may stipulate to waive the 90-day hearing requirement. (Gov. Code § 12968; Cal. Code Regs., tit. 2, § 7414, subd. (a).)<sup>3</sup>

---

<sup>3</sup> Prior to the commencement of the hearing at the pre-hearing conferences, and also at hearing in this matter, the undersigned administrative law judge asked the parties to address whether the hearing against the individual respondent Ramez Suliman was timely, under Government Code section 12968.

The record showed that the accusation against respondents was timely issued on June 25, 2008, the DFEH having established that the one-year deadline was tolled by its filing of a discovery petition in Fresno Superior Court. (Gov. Code, § 12963.5, subd. (f); *DFEH v. O'Neill Family Trust* (Sept. 16, 2008) FEHC Dec. No. 08-08-P, at p. 7 [2008 WL 5869851 (Cal.F.E.H.C.)].) Thereafter, on October 24, 2008, the DFEH issued the first Notice of Hearing, with the hearing originally noticed to commence on December 16, 2008. The Commission's power to conduct the hearing is generally triggered by the DFEH's issuance of a Notice of Hearing. (Cal. Code Regs., tit. 2, § 7414.) On receipt of the Notice of Hearing, respondents' then-attorney LoStracco sought a continuance of the matter, which was granted, to February 23, 2009.

The timeliness requirement under Government Code section 12968 is not jurisdictional, and is subject to waiver, estoppel and equitable tolling. (*Dept. Fair Empl. & Hous. v. California State Univ., Hayward* (Nov. 9, 1988) No. 88-18, FEHC Precedential Decs. 1988-89, CEB 6, at p. 9, [1988 WL 242650 (Cal.F.E.H.C.)]; *Dept. Fair Empl. & Hous. v. Cairo* (Jan. 6, 1984) No. 84-04, FEHC Precedential Decs. 1984-85, CEB 3, at pp. 10-11, fn. 1 [1984 WL 54284 (Cal.F.E.H.C.)]. The Commission's established policy is to resolve cases on their merits rather than "upon procedural or other grounds." (*Dept. Fair Empl. & Hous. v. Dyna-Med, Inc.* (Nov. 4, 1982) No. 82-14, FEHC Precedential Decs. 1982-83, CEB 6, at p. 10 [1982 WL 36758 (Cal.F.E.H.C.)], mod. on jurisdictional grounds *sub nom. Dyna-Med, Inc. v. Fair Empl. & Hous. Com.* (1987) 43 Cal.3d 1379.) To dismiss a case for technical reasons, absent a showing of actual prejudice, would be fundamentally inconsistent with the broad remedial scheme of the FEHA. (Gov. Code, §§ 12920; 12921, subd. (b).)

At hearing, Anderson testified to the harm she would suffer if the claim against Suliman as an individual were to be dismissed. Anderson, believing Suliman could be held liable as an individual,<sup>4</sup> had given up her right to seek a civil remedy against him, and the time to do so has now expired. Moreover, as the DFEH argued, once Artifer U.S.A. ceased doing business, Suliman's dismissal from this administrative action would effectively preclude any remedy whatsoever for complainant.

To the contrary, Suliman failed to establish any prejudice. The record showed that his then-attorney LoStracco sought a continuance of the hearing in this matter in November 2008, seeking a new date for the hearing in February 2009, well outside the 90-day time period. And at the pre-hearing conferences and throughout the hearing in this matter, respondent Suliman appeared representing himself, both as an individual and on behalf of Artifer U.S.A.

This decision finds that, based on this record, Suliman waived the 90-day hearing requirement of Government Code section 12968. Further, balancing the parties' interests and in particular noting the absence of any prejudice to respondents, Suliman is estopped from asserting the 90-day defense as a bar to liability. Finally, applying the doctrine of equitable tolling, this decision finds that the hearing in this matter was timely.

---

<sup>4</sup> The record in this case showed that, of the two blank written waivers the DFEH sent to respondents as part of the accusation package, Suliman signed only one, endorsing it with his signature over the pre-printed signature lines, which stated "Agent for Service of Process for ARTIFER USA, INC. a California Corporation, **Respondents** [emphasis added.]." At the hearing in this matter, Phoebe Liu, DFEH staff counsel, testified that, on receipt of the written waiver from LoStracco, she believed that it had been executed on both respondents' behalf. This was understandable, given that Suliman himself signed the document, the document itself referred to "respondents" in the plural, and LoStracco's office had attached a facsimile cover page stating "Re: Ramez Suliman D.O.B. 05/20/66."

## Liability

### A. Sexual Harassment

The DFEH alleges that respondents are liable for Suliman's sexual harassment of complainant Anderson, in violation of Government Code section 12940, subdivision (j).

A violation under Government Code section 12940, subdivision (j), may be established by proving that respondent engaged in harassment based on complainant's sex and that the harassment created a hostile or abusive work environment. (Gov. Code § 12940, subd. (j)(1); *Beyda v. City of Los Angeles* (1998) 65 Cal.App.4th 511, 516-517; *Mogilefsky v. Superior Court* (1993) 20 Cal.App.4th 1409, 1413-1414; *Fisher v. San Pedro Peninsular Hospital* (1989) 214 Cal.App.3d 590, 605; *Dept. Fair Empl. & Hous. v. Capital Hills Arco/AM-PM* (June 12, 2006) No. 06-03-P [2006 WL 2239656, at \*8 (Cal.F.E.H.C)].)

In cases alleging hostile work environment sexual harassment, the DFEH must establish that the conduct complained of was severe enough or sufficiently pervasive to alter the conditions of employment and to create a work environment that qualifies as hostile or abusive to employees because of their sex. (*Miller v. Dept. of Corrections* (2005) 36 Cal.4th 446, 462; *Sheffield v. Los Angeles County Dept. of Social Services* (2003) 109 Cal.App.4th 153, 161-162.) The objective severity of the harassment is judged from the perspective of a reasonable person in the complainant's position, considering all of the circumstances, and is guided by common sense and sensitivity to social context. (*Beyda v. City of Los Angeles*, *supra*, 65 Cal.App.4th at p. 517, citing *Oncala v. Sundowner Offshore Services, Inc.* (1998) 523 U.S. 75, 81.)

At hearing, complainant Anderson credibly and convincingly testified to Suliman's continuing, unsolicited sexual conduct toward her. This conduct included his repeated crude and sexually graphic remarks about her coworker Jane Doe 1, frequent comments about Anderson's personal appearance; insinuations about her sex life with her husband, Chad, and use of volatile language and sexist expletives in the workplace, including the word "stupid bitch" and "fucking whore." Anderson also credibly testified that Suliman told her to "look as good as possible and flirt with [the bank tellers]" to get funds released for Artifer U.S.A., invited her to socialize with him after work for drinks, and set up a webcam directed at her chest, and which Suliman used to eavesdrop on her private conversations.<sup>5</sup> The evidence also established that Suliman gave Anderson unwanted gifts, including money to buy

---

<sup>5</sup> The California Supreme Court recently decided, in *Hernandez v. Hillside, Inc.* (Aug. 3, 2009, S147552) \_\_ Cal.4th \_\_ [2009 WL 2356904], that, while employees have a reasonable privacy interest in their work area, the installation of a surveillance camera that operated only after normal business hours did not violate the employees' privacy rights in that case, as it was limited in scope, and its purpose was to monitor unauthorized access to pornographic web sites on office computers. Here, to the contrary, the evidence showed that respondents' webcam was positioned to point at complainant's chest when she sat at her desk in her office during business hours. This supports the finding that Suliman's use of the webcam was part of the course of sexually harassing conduct in the workplace.

“sexier” clothing, and a bottle of wine to enhance her sex life.

Suliman’s sexual conduct toward Anderson escalated in early February 2007, when he came to her home, and grabbed and hugged her so tightly that she was unable to move, telling her, “Damn look at you” and “Why don’t I get this at the office?” Thereafter, Suliman made increasingly explicit sexual comments to Anderson. In a telephone call to Anderson on February 9, 2007 when her husband was out of town, Suliman prefaced his remarks by acknowledging that what he was about to say was “inappropriate” because he was her boss. He then told her, “Has anybody ever made love to you the way you feel you deserve to be made love to? Has anyone ever...made you have an orgasm so hard that you’ve passed out?” The next business day, on Monday February 12, 2007, Suliman told Anderson that “After our conversation Friday night, I had to fuck the shit out of [Jane Doe 2] while I was thinking about you....”

Suliman’s sexual conduct directed at Anderson throughout her employment at Artifer U.S.A. was at all times entirely unwelcome to Anderson. She repeatedly told Suliman to stop, and he neither heeded nor respected her requests. The evidence at hearing established that Suliman’s unwanted sexual conduct toward Anderson was sufficiently pervasive to alter her working conditions by creating an oppressive, hostile and offensive work environment. Suliman’s conduct imbued complainant’s daily work life with a sense of dread and anxiety, not knowing what Suliman’s next move or next demeaning remark would be. Moreover, his physical touching of Anderson, by grabbing and hugging her, and his explicit sexual remarks about her sex life and his desire to have sex with her, were also sufficiently severe to constitute a hostile work environment under the Act. Moreover, Suliman’s conduct on Anderson’s last day of work, telling her that he had sex while thinking about her, then breaking her coworker’s office door, culminated in Anderson’s feeling so frightened and disgusted that she was forced to cower in her office, until her husband could pick her up from work.

In sum, the DFEH proved that respondent Suliman subjected complainant to unwelcome sexual conduct which was both severe and pervasive. This conduct rendered complainant’s work environment hostile, abusive and offensive, and deprived her of a discrimination-free workplace.

Accordingly, the Department established that respondent Suliman subjected complainant to sexual harassment in violation of the Act. (Gov. Code, § 12940, subd. (j).)

#### B. Constructive Discharge

To establish a constructive discharge, the DFEH must establish, by a preponderance of the evidence, that the employer either intentionally created or knowingly permitted working conditions that were so intolerable or aggravated at the time of the employee’s resignation that a reasonable employer would realize that a reasonable person in the employee’s position would be compelled to resign. (*Turner v. Anheuser-Busch, Inc.* (1994) 7 Cal.4th 1238, 1251; *Dept. Fair Empl. & Hous. v. Capital Hills Arco/A.M.-P.M., supra*, 2006 WL 2239656 at \*8.)



That standard is amply met here. The above-described verbal assaults by Suliman on Anderson's dignity and integrity as a working professional through his remarks about her appearance and sexual desirability, his graphically sexual comments about other women, his physically grabbing her in her own home, his sexually explicit telephone calls and comments, culminating to his remark to Anderson on February 12, 2009, that he "had to fuck the shit out of" another woman while thinking about Anderson, created working conditions so intolerable that the reasonable employee in Anderson's situation would have no option other than to resign.

Thus, the DFEH established that respondents constructively discharged Anderson from her employment on February 12, 2007.

### C. Sex Discrimination

The DFEH also asserts that respondent Artifer U.S.A. discriminated against Anderson based on her sex, in violation of Government Code section 12940, subdivision (a).

Such discrimination may be established where the preponderance of the evidence establishes that complainant's sex as a female was a factor in Anderson's being subjected to disparate treatment at Artifer U.S.A. because she was female. (See *Dept. Fair Empl. & Hous. v. Sasco Electric* (June 22, 2007) No. 07-02-P [2007 WL 5672426]<sup>6</sup> (Cal.F.E.H.C.)] *aff'd sub. nom. Sasco Electric v. Fair Empl. & Hous.Com.* (August 7, 2009, D053492) \_\_ Cal.App.4<sup>th</sup> \_\_ [2009 WL 2413660].)

The record showed that Suliman used disparaging slurs directed at women in the workplace, including use of the degrading term "stupid bitch" and "fucking whore," in Anderson's presence, while describing her female co-worker. Furthermore, the record established Suliman's objectification of Anderson as a female, evidenced by his instructions to her to put on makeup; buy "sexy" clothes; "do something" to look nicer; and "flirt" with male bank tellers. This evidence, taken together with Suliman's continuing severe and pervasive sexual harassment of Anderson throughout her employment at Artifer U.S.A., established discrimination based on sex, in violation of Government Code section 12940, subdivision (a).

### D. Respondents' Liability

Respondent Suliman is personally liable as an employer for his own conduct of sexually harassing complainant, pursuant to Government Code section 12940, subdivision (j)(1). Moreover, respondent Artifer U.S.A., as Anderson's employer, is strictly liable for the hostile work environment created by respondent Suliman. (Gov. Code, § 12940, subs. (j)(1) and (j)(4)(A); see *State Dept. of Health Services v. Sup. Court* (2003) 31 Cal.4th 1026, 1042); *Dept. Fair Empl. & Hous. v. Capital Hills ARCO/A.M-P.M.*, *supra*, No. 06-03-P

---

<sup>6</sup> Improperly cited as 2005 WL 5672426.

[2006 WL 2239656, at \*9-10 (Cal.F.E.H.C.)]; *Dept. Fair Empl. & Hous. v. Bee Hive Answering Service* (June 7, 1984) No. 84-16, FEHC Precedential Decs. 1984-185 CEB 8, at pp. 23-24 [1984 WL 54296 (Cal.F.E.H.C.)].)

Accordingly, both respondent Suliman and respondent Artifer U.S.A. will be held liable, jointly and severally, for the violation of Government Code section 12940, subdivision (j), under the Act.

Respondent Artifer U.S.A. is also held liable for discriminating against Anderson based on her sex, in violation of Government Code section 12940, subdivision (a). (See *Dept. Fair Empl. & Hous. v. Acosta Tacos* (June 16, 2009) FEHC Dec. No. 09-03P, at pp. 9-10 [2009 WL \_\_\_\_\_ (Cal.F.E.H.C.)].)

#### E. Failure to Take All Reasonable Steps

The DFEH also established that Artifer U.S.A. failed to take all reasonable steps to prevent sexual harassment. Respondent failed to provide a copy of its anti-discrimination and anti-harassment policy to Anderson, and failed to post the FEHA-mandated notices advising its employees of their rights and responsibilities concerning complaints of discrimination or harassment. Furthermore, respondents neither undertook training in sexual harassment or discrimination prevention, nor trained their employees.

Accordingly, respondent Artifer U.S.A. will be held liable for violating Government Code section 12940, subdivision (k).

### Remedies

#### A. Make-Whole Relief

Having established that respondents violated the Act by subjecting complainant to sexual harassment, the DFEH is entitled to an order of whatever forms of relief are necessary to make complainant whole for any loss or injury she suffered as a result of such harassment. The DFEH must demonstrate the nature and extent of the resulting injury, and respondents must demonstrate any bar or excuse they assert to any part of these remedies. (Gov. Code, § 12970, subd. (a); Cal. Code Regs., tit. 2, § 7286.9; *Dept. Fair Empl. & Hous. v. Madera County* (Apr. 26, 1990) No. 90-03, FEHC Precedential Decs. 1990-91, CEB 1 at p. 34 [1990 WL 312871 (Cal.F.E.H.C.)].)

The DFEH's accusation requested an award of complainant's lost wages, out-of-pocket damages, actual damages for emotional distress, an administrative fine, affirmative relief and such other relief as the Commission deems appropriate.

##### 1. Back Pay

The DFEH requests a back pay award to compensate Anderson from the date she was constructively discharged, February 12, 2007, until November 1, 2007, the date that the DFEH concedes that respondent Artifer U.S.A. ceased doing business. The DFEH asks for an award of \$10,636, representing the amount Anderson would have earned in that period, less the amounts she received as offsets in disability and workers' compensation payments.

The burden rests with respondents to establish that complainant failed to mitigate her damages. (*Dept. Fair Empl. & Hous. v. Capital Hills Arco/AM-PM*, *supra*, No. 06-03-P [2006 WL 2239656, at \*11 (Cal.F.E.H.C.)]; *Parker v. Twentieth Century-Fox Film Corp.* (1970) 3 Cal.3d 176, 181-182.) Respondents failed to meet that burden here.

The evidence established that, as a result of Suliman's sexual harassment, Anderson's doctor placed her on disability leave after she left Artifer U.S.A. Her doctors persuasively testified that the severe emotional after-effects of the sexual harassment prevented Anderson from looking for work, and she ultimately changed careers, studying aesthetics at Federico Career College. Because her inability to work or look for work was directly caused by respondents' unlawful conduct, Anderson is entitled to the wages she lost in this period. (*DFEH v. Madera County*, *supra*, 1990-91 CEB 1, at pp. 36-37; *DFEH v. Kingsburg Cotton Oil Co.* (Dec. 7, 1984) No. 84-30, FEHC Precedential Decs. 1984-1985, CEB 11, at p. 36 [1984 WL 54310 (Cal.F.E.H.C.)].)<sup>7</sup> It is noted that the DFEH seeks only those lost wages that Anderson would have earned until, as the DFEH contends, Artifer U.S.A. ceased doing business in November 2007.

Anderson's decision to return to school to train for a change of career to aesthetician does not disqualify her from a back pay award. Retraining is an appropriate form of mitigation, in a case such as this, where respondents' unlawful egregious sexual harassment has made it difficult or unwise for complainant to continue that kind of employment. (See, e.g., *Dept. Fair Empl. & Hous. v. Cairo*, *supra*, 1984-85, CEB 3, at pp. 17-18 [respondent did not meet burden to show back pay should be reduced where complainant's return to school to be trained in another field was "compelled in large part by respondent's own misconduct"]; *Dept. Fair Empl. & Hous. v. San Mateo County* (Nov. 4, 1982) No. 82-16, p. 38, FEHC Precedential Decs. 1982-83, CEB 7, at p. 38 [1982 WL 36760 (Cal.F.E.H.C.)] [complainant's return to school found to be a "reasonable attempt to find comparable, as opposed to inferior, employment"].)

The record established that Anderson's salary while employed by Artifer U.S.A. was \$3,000 a month. The period for which back pay is sought is from February 12 to November 1, 2007, a period of eight and a half months. Multiplying \$3,000 times 8.5 equals

---

<sup>7</sup> As the Commission held in *Dept. Fair Empl. & Hous. v. Kingsburg Cotton Oil Co.*, *supra*, 1984-85, CEB 11, at p. 36:

Since respondent's termination of her employment caused [complainant] distress sufficient to render her unable to look for work, we find that absent respondent's conduct, [complainant] would otherwise have been able to work and is therefore entitled to back pay during the disability period, with the amount of her disability benefits offset from the back pay.

\$25,500. During the claim period, Anderson received \$7,172 in disability payments; \$3,692 in workers' compensation payments; and \$4,000 workers' compensation retroactive reimbursement, for a total of \$14,864. As requested by the DFEH, these shall be deducted from complainant's back pay award. (*Dept. Fair Empl. & Hous. v. Dept. of Corrections (Barr)* (Sept. 16, 2003) No. 03-11-P [2003 WL 22733898, at \*13 (Cal.F.E.H.C.)]) Calculating the gross wage loss of \$25,500, less \$14,864 in deductible offsets, renders an award of \$10,636.

This proposed decision awards complainant \$10,636 in back pay for the relevant period. Interest will accrue on this amount, at the rate of ten percent per year, compounded annually, from the effective date the earnings accrued until the date of payment.

## 2. Out-of-Pocket Damages

The DFEH seeks reimbursement of the school fees paid by complainant to attend Federico Career College in the sum of the tuition costs of \$12,723. The DFEH did not, however, establish that these tuition expenses were reasonably incurred and thus are compensable as a damage item for which respondents are liable.<sup>8</sup>

## 3. Damages for Emotional Distress

The Commission has the authority to award actual damages for emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses in an amount not to exceed, in combination with any administrative fines imposed, \$150,000 per aggrieved person per respondent. (Gov. Code, § 12970, subds. (a) (3) and (a)(4).) In determining whether to award damages for emotional injuries, and the amount of any award for these damages, the Commission considers relevant evidence of the effects of discrimination on the aggrieved person with respect to: physical and mental well-being; personal integrity, dignity, and privacy; ability to work, earn a living, and advance in his or her career; personal and professional reputation; family relationships; and, access to the job and ability to associate with peers and coworkers. The duration of the injury and the egregiousness of the discriminatory practice are also factors to be considered. (Gov. Code, § 12970, subd. (b); *Dept. Fair Empl. & Hous. v. Aluminum Precision Products, Inc.* (Mar. 10, 1988) No. 88-05, FEHC Precedential Decs. 1988-89, CEB 4, pp. 10-14 [1988 WL 242635 (Cal.F.E.H.C.)].)

Here, the DFEH seeks an award of \$50,000 to compensate complainant for her emotional injuries stemming from respondents' unlawful conduct under the Act. That award is amply supported by the record.

---

<sup>8</sup> Anderson's medical expenses for her treatment and therapy by Drs. Sievert and Gandolfo for respondents' sexual harassment may be seen as compensable damages in this action, even if paid by a collateral source, such as insurance. (See *Hrnjak v. Graymar, Inc.* (1971) 4 Cal.3d 725, 731-732; *Helfend v. Southern Calif. Rapid Transit Dist.* (1970) 2 Cal.3d 1, 10.) However, the DFEH did not offer any evidence of Anderson's medical bills and did not seek them as damages in this action.

Anderson's compelling and credible testimony established that Suliman's sexual harassment caused her significant ongoing emotional distress. The evidence established that Anderson found Suliman's unsolicited remarks, unannounced visits to the Andersons' home, and unwanted gifts, disturbing, unsettling and frightening. On one such visit to the Andersons' home, Suliman grabbed Anderson and hugged her tightly, causing Anderson to feel frightened for her safety. The record further established that, as a result of Suliman's sexual harassment, Anderson, who had previously been happy and upbeat about her new job and recent marriage, became distraught, uneasy, tense and tearful. Suliman's repeated sexual remarks made Anderson feel degraded, uncomfortable and self conscious about her appearance. She questioned her own judgment about how she dressed and altered her appearance to try and discourage Suliman's unwanted attentions. Compounding Anderson's sense of intrusion and lack of autonomy as a professional woman was Suliman's setting up a webcam in her office, repositioned regularly to aim at her chest.

During the course of Anderson's two month employment at Artifer U.S.A., Suliman's sexually harassing conduct toward her escalated in its focus and intensity. Anderson compellingly testified that, during this period of escalating conduct by Suliman, Anderson's symptoms of anxiety and distress correspondingly intensified. The evidence established that the ongoing sexual harassment affected both Anderson's ability to do her job and her personal life, damaging her physical and mental well being, and causing her to experience nightmares. She further testified that she became dependent on her husband and hyper vigilant of her surroundings, trying to restrict her activities to daylight hours, for fear of being alone at night. To the date of hearing, complainant remained fearful of inadvertently encountering Suliman, and had not yet fully recovered from the emotional effects of the sexual harassment.

Considering the facts and testimony elicited here, respondents Suliman, the principal and founder of Artifer U.S.A., Inc., and the company, Artifer U.S.A., Inc., jointly and severally, will be ordered to pay Anderson the amount of \$50,000 in actual damages for her emotional distress.<sup>9</sup> Interest will accrue on this amount, at the rate of ten percent per year from the effective date of this decision until the date of payment.

#### B. Administrative Fine

The DFEH also seeks an order awarding an administrative fine to vindicate the purpose and policy of the Act. The Commission has the authority to order administrative fines pursuant to the Act where it finds, by clear and convincing evidence, a respondent "has been guilty of oppression, fraud, or malice, expressed or implied, as required by section 3294 of the Civil Code." (Gov. Code, § 12970, subd. (d).) In determining the appropriate amount of an administrative fine, the Commission shall consider relevant evidence of, including but not limited to, the following: willful, intentional, or purposeful conduct; refusal to prevent or

---

<sup>9</sup> This decision's award of actual damages for emotional distress does not include any sums for stress experienced by Anderson as a result of the litigation. (See *MacCharles v. Bilson* (1986) 186 Cal.App.3d 954, 958.)

eliminate discrimination; conscious disregard for the rights of the complainant; commission of unlawful conduct; intimidation or harassment; conduct without just cause or excuse, or multiple violations of the Act. (Gov. Code, § 12970, subd. (d).)

Here, the Department established, by clear and convincing evidence, that Suliman's subjecting Anderson to sexual harassment was egregious, willful and malicious, constituting oppressive, threatening and intimidating conduct. (Civ. Code, § 3294.) The record showed that Suliman implicitly recognized the impropriety of his conduct, acknowledging to Anderson that his remarks were "inappropriate" as her boss. Moreover, Anderson repeatedly asked Suliman to stop his offensive conduct, yet Suliman persisted, and indeed escalated his sexual harassment, in conscious disregard of Anderson's right to a discrimination-free working environment.<sup>10</sup>

The record showed that Artifer U.S.A. lacked effective policies, avenues for employee complaints, or redress of grievances. Particularly troubling is the lack of an effective harassment prevention policy and complaint procedure where Suliman, the harasser, was the sole manager and decision-maker. Anderson was trapped by Suliman's oppressive and intimidating harassment without refuge or recourse.

Under the circumstances of this case, an administrative fine in the amount of \$25,000 will be awarded against Artifer U.S.A. and Suliman, jointly and severally, payable to the state's General Fund. (Civ. Code, § 3294; Gov. Code, § 12970, subd. (d).) Interest will accrue on this amount at the rate of ten percent per year, from the effective date of this decision until the date of payment.

### C. Affirmative Relief

The DFEH's accusation asks that respondents be ordered to: cease and desist from sexual harassment and to undergo training about sexual harassment prevention. The Act authorizes the Commission to order affirmative relief, including an order to cease and desist from any unlawful practice, and an order to take whatever other actions are necessary, in the Commission's judgment, to effectuate the purposes of the Act. (Gov. Code § 12970, subd. (a)(5).)

The affirmative relief sought by the DFEH is appropriate and shall be granted. Respondents will be ordered to cease and desist from sexual harassment. Respondent Suliman shall be ordered to undergo sexual harassment prevention training, at his own expense, to prevent recurrence of sexual harassment. Furthermore, prior to employing or supervising any employees or persons providing services pursuant to a contract in California, respondents shall be ordered to develop and circulate a sexual harassment prevention policy,

---

<sup>10</sup> Suliman further acknowledged his willful and conscious disregard of his obligations under the FEHA by mockingly referring to Jane Doe 1 as someone whom he could never fire, as he would face a "huge sexual harassment case."

undertake and provide training on that policy, and post all required DFEH posters prominently in the workplace.

#### ORDER

1. Respondent Artifer U.S.A. and Ramez Suliman, jointly and severally, shall immediately cease and desist from sexually harassing any employees or persons providing services pursuant to a contract, as made unlawful under the Fair Employment and Housing Act.

2. Within 60 days of the effective date of this decision, respondent Artifer U.S.A. and Ramez Suliman, jointly and severally, shall pay to complainant Brooke Anderson lost wages in the sum of \$10,636, together with interest thereon, calculated at the rate of ten percent per year, compounded annually, from the date the earnings would have accrued until the date of payment.

3. Within 60 days of the effective date of this decision, respondent Artifer U.S.A. and Ramez Suliman, jointly and severally, shall pay to complainant Brooke Anderson compensatory damages for emotional distress in the sum of \$50,000, together with interest thereon, at the rate of ten percent per year, from the effective date of this decision until the date of payment.

4. Within 60 days of the effective date of this decision, respondent Artifer U.S.A. and Ramez Suliman, jointly and severally, shall pay to the State of California's General Fund an administrative fine in the amount of \$25,000, together with interest on this amount, at the rate of ten percent per year, from the effective date of this decision until the date of payment.

5. Within 60 days of the effective date of this decision, Ramez Suliman shall undergo, at his own expense, training on sexual harassment prevention under the Fair Employment and Housing Act. Ramez Suliman shall secure advance approval from the Department of Fair Employment and Housing of the training provider, and the form and content of the training and shall provide written certification of his completion of the training to the Department and Commission.

6. On or after the effective date of this decision, respondents Artifer U.S.A., Inc. and Ramez Suliman shall, prior to employing or supervising any employees or persons providing services pursuant to a contract in California, develop, implement and post a policy against unlawful harassment in the workplace, and circulate this policy to all said employees and persons.

7. On or after the effective date of this decision, respondents Artifer U.S.A., Inc. shall, prior to employing or supervising any employees or persons providing services pursuant to a contract in California, provide training to all said employees and persons in the prevention of sexual harassment.

8. Within 90 days after the effective date of this decision, respondents Artifer U.S.A., Inc. shall, prior to employing or supervising any employees or persons providing services pursuant to a contract in California, sign notices which conform to Attachments A and B of this decision and shall post clear and legible copies of these notices in a conspicuous place in the workplace. Posted copies of these notices shall not be reduced in size, defaced, altered, or covered by other material. The notice conforming to Attachment A shall be posted for a period of 90 working days. The copy conforming to Attachment B shall be posted permanently.

9. Within 100 days after the effective date of this decision, respondents Artifer U.S.A., Inc. and Ramez Suliman shall, in writing, notify the Department of Fair Employment and Housing and the Commission of the nature of their compliance with sections two through eight of this Order. Respondents shall also notify the Department and Commission of any change of address and telephone number.

Any party adversely affected by this decision may seek judicial review of the decision under Government Code section 11523, Code of Civil Procedure section 1094.5 and California Code of Regulations, title 2, section 7437. Any petition for judicial review and related papers should be timely served on the Department, Commission, respondent and complainant.

DATED: August 10, 2009

---

CAROLINE L. HUNT  
Administrative Law Judge



ATTACHMENT A

NOTICE TO ALL EMPLOYEES AND PERSONS PROVIDING SERVICES PURSUANT  
TO A CONTRACT FOR ARTIFER U.S.A., INC. OR RAMEZ SULIMAN

After hearing, the California Fair Employment and Housing Commission has found that Artifer U.S.A., Inc. and Ramez Suliman have violated the Fair Employment and Housing Act. (Dept. Fair Empl. & Hous. v. Artifer U.S.A., Inc., et al. (2009) No. 09-\_\_\_\_.)

As a result of this decision, Artifer U.S.A., Inc. and Ramez Suliman have been ordered to post this notice, and to take the following actions:

1. Cease and desist from sexual harassment.
2. Pay complainant back pay.
3. Pay a monetary award to the complainant for emotional distress.
4. Pay an administrative fine to the state's General Fund.
5. Develop a formal written policy against sexual harassment and violence based on sex.
6. Post a statement of employees' rights and remedies under the Fair Employment and Housing Act.
7. Undergo and provide training on prevention of sexual harassment.

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
Authorized Representative of  
Artifer U.S.A., Inc.

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
Ramez Suliman

THIS NOTICE IS REQUIRED TO BE POSTED UNDER PENALTY OF LAW BY THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING COMMISSION. IT SHALL REMAIN POSTED FOR NINETY (90) CONSECUTIVE WORKING DAYS IN THIS LOCATION AND SHALL NOT BE ALTERED, REDUCED, OBSCURED, OR OTHERWISE TAMPERED WITH IN ANY WAY THAT HINDERS ITS VISIBILITY.

## ATTACHMENT B

### NOTICE TO ALL EMPLOYEES AND PERSONS PROVIDING SERVICES PURSUANT TO A CONTRACT FOR ARTIFER U.S.A., INC. OR RAMEZ SULIMAN

### YOUR RIGHTS AND REMEDIES UNDER THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT

### YOU HAVE THE RIGHT TO BE FREE FROM UNLAWFUL EMPLOYMENT HARASSMENT OR DISCRIMINATION

The California Fair Employment and Housing Act prohibits harassment because of race, religious creed, color, national origin, ancestry, physical and mental disability, medical condition, marital status, sex, sexual orientation, and age. You have the right to be free of all such harassment in your workplace. Such harassment may take various forms, including:

VERBAL CONDUCT such as epithets, derogatory comments, slurs, unwanted sexual advances, invitations, comments, or name-calling

VISUAL CONDUCT such as derogatory posters, cartoons, drawings, gestures, or mimicking sexual acts

PHYSICAL CONDUCT such as rape, assault, blocking normal movement, stalking, touching body parts or interference with work directed at you because of your sex, sexual orientation, or other protected basis

THREATS AND DEMANDS to submit to sexual requests in order to keep your job or avoid some other loss, and offers of job benefits in return for sexual favors

RETALIATION for having resisted or reported the harassment

The law prohibits any form of protected-basis harassment that impairs your working ability or emotional well-being at work. You may have a claim of harassment even if you have not lost your job or some other benefit.

### YOU HAVE THE RIGHT TO COMPLAIN ABOUT SUCH HARASSMENT AND GET RELIEF.

If you believe that you are being harassed on the job because of your sex, sexual orientation, race, ancestry or other protected basis, you should use the procedures outlined in this policy to file a complaint and have it investigated.

ATTACHMENT B

Page 2

THE CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING investigates and prosecutes complaints of such harassment in employment. If you think you are being harassed or that you have been retaliated against for resisting or complaining about harassment, you may file a complaint with the Department at:

Department of Fair Employment and Housing  
1320 East Shaw Avenue, Suite 150  
Fresno, CA 93710-7915  
(559) 244-4760 or (800) 884-1684  
[www.dfeh.ca.gov](http://www.dfeh.ca.gov)

The Department will investigate your complaint. If the complaint has merit, the Department will attempt to resolve it. If no resolution is possible, the Department will prosecute the case with its own attorney before the Fair Employment and Housing Commission or in court. The Commission or court may order the harassment stopped and can require your employer to reinstate you and to pay back wages, front pay and other out-of-pocket losses, damages for emotional injury, administrative fines, civil penalties or punitive damages, and other appropriate relief.

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
Authorized Representative of  
Artifer U.S.A., Inc.

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
Ramez Suliman

THIS NOTICE IS REQUIRED TO BE POSTED UNDER PENALTY OF LAW BY THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING COMMISSION. IT SHALL REMAIN PERMANENTLY POSTED IN THIS LOCATION AND SHALL NOT BE ALTERED, REDUCED, OBSCURED, OR OTHERWISE TAMPERED WITH IN ANY WAY THAT HINDERS ITS VISIBILITY.